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10 Attorneys for CITY OF SAN JOSE

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11  
12 JUAN DIAZ, KEITH KEESLING,  
13 CHRISTOPHER MURPHY, GARY  
14 WEEKLEY, KAREN ALLEN and other  
15 employees similarly situated,

16 Plaintiffs,

17 v.

18 CITY OF SAN JOSE,

19 Defendant.

Case Number: C07-06424 JW

*Stipulation*  
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11  
12 **THIRD STIPULATION AND  
13 [PROPOSED] ORDER EXTENDING  
14 THE EARLY NEUTRAL EVALUATION  
15 PERIOD**

20 **STIPULATION**

21 Pursuant to the stipulation of the parties, the Court, on April 23, 2008, ordered the  
22 matter to Early Neutral Evaluation ("ENE") and appointed Thomas Gosselin, Esq. as the  
23 evaluator. The parties engaged in an ENE session before Mr. Gosselin on July 21, 2008. At  
24 the end of session, it was determined that it would be most efficient for the parties and the  
25 court, and would more likely result in the informal resolution of this matter, were the parties to  
26 engage in another ENE session with Mr. Gosselin after having a reasonable opportunity to  
27 further study the scope of the claims and damages being asserted by Plaintiffs under the Fair  
28 Labor Standards Act. The parties also agreed to attempt to address the related case, Welch

v. *City of San Jose* (Case No. C08-02132 JW) at the second ENE, as some of the legal issues overlap in the two cases. Combining the ENE of *Diaz v. City of San Jose* and *Welch v. City of San Jose* would further promote efficiency for the parties and the court.

The parties subsequently scheduled another joint ENE session with Mr. Gosselin for September 18, 2008. Due to the complexity of the issues and the number of employees involved in the case (basically, every firefighter in the San Jose Fire Department), the City requested, and the Plaintiffs and the evaluator agreed, that the subsequent ENE session should be rescheduled to October 30, 2008.

In the meantime, the City has continued analyzing the issues and gauging its exposure, a process which has taken longer than originally planned, and will be placing this matter before the entire City Council in closed session in early November 2008. The City believes that the second ENE session will be more effective after the City Council has an opportunity to review this matter in closed session. As such, the parties and the evaluator have agreed to continue the second ENE session to November 12, 2008 at 1:30 p.m.

Therefore, the parties, with Mr. Gosselin's support, stipulate through counsel that the ENE period will be extended up through and including November 14, 2008, by which time the parties will have completed the second ENE session.

WYLIE, MCBRIDE, PLATTEN & RENNER

Dated: October 28, 2008

By: /s/ Carol Koenig  
CAROL KOENIG

Attorney for Plaintiffs, JUAN DIAZ, KEITH  
KEESLING, CHRISTOPHER MURPHY,  
GARY WEEKLEY, and KAREN ALLEN

RICHARD DOYLE, City Attorney

Dated: October 28, 2008

By: /s/ Robert Fabela  
ROBERT FABELA  
Sr. Deputy City Attorney

Attorney for Defendant CITY OF SAN JOSE

1 ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:

2 I attest that concurrence in the filing of this document by the signatories, Robert  
3 Fabela and Carol Koenig, has been obtained, and that a record of the concurrence shall be  
4 maintained at the Office of the City Attorney.

5 Date: October 28, 2008

By: /s/ Robert Fabela  
6 ROBERT FABELA

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1 [PROPOSED] ORDER

2 IT IS HEREBY ORDERED that the ENE period shall be extended up through and  
3 including November 14, 2008, by which time the parties will schedule another ENE session  
4 with the Evaluator regarding both the present case as well as *Welch v. City of San Jose*  
5 (Case No. C08-02132 JW).

6 In light of this Order, the Court continues the Case Management Conference currently set for  
7 November 17, 2008 to **December 1, 2008 at 10 a.m.** On or before **November 21, 2008**, the parties  
8 shall file a Joint Case Management Statement. The Statement shall include, among other things, an  
9 update on the parties' ENE efforts and a discovery plan with a proposed date for the close of all  
10 discovery.

12 Dated: October 30, 2008

13   
14 JAMES WARE  
United States District Judge